

PRE-ANNEXATION AGREEMENT

This Pre-Agreement made and

entered into this ____ day of

_____, 20____, by and

between the Village of Downers

Grove, an Illinois municipal

corporation (hereinafter referred to as the "Village") and

_____ (hereinafter referred to as the "Owners"),

WITNESSETH:

WHEREAS, the Owners are all of the Owners of record of certain real estate, described in Exhibit "A" hereto (hereinafter referred to as the "Property"); and

WHEREAS, the Property is not located within the corporate boundaries of any municipality, but is within the County of DuPage, Illinois, the jurisdiction of the DuPage Water Commission, and the planning area of the Village, as established by boundary agreements with adjacent municipalities, and is or will be contiguous to the Village; and

WHEREAS, the Property is located within an area that has been affected by contaminated well water, which poses a significant threat to the health and safety of the inhabitants of the area; and

WHEREAS, the Village has in existence a municipal water system including pipes and facilities for the distribution and provision of Lake Michigan water to properties both within and without the corporate limits of the Village of Downers Grove; and

WHEREAS, the Village has entered into an Intergovernmental "Implementing Agreement" with the DuPage Water Commission and the County of DuPage, whereby the Village has committed to provide Lake



Michigan water service to the Property and other residential properties within the same identified Service Area (the "Affected Area"), on certain terms and conditions. The Implementing Agreement is attached hereto as Exhibit "B"; and

WHEREAS, the parties hereto desire that the Property shall be annexed to the Village no later than ten (10) years after the Effective date of this Agreement, but that the Village shall extend its municipal water system and provide Lake Michigan water to the Property prior to annexation, all on the terms and under the conditions hereafter set forth; and

WHEREAS, the Owners propose that upon annexation, the Property be zoned as pursuant to the zoning classification(s) specified in the Village's Zoning Ordinance; and

WHEREAS, the Village Council has determined that the future annexation of the Property would further the orderly growth of the Village and promote the general welfare of the Village.

WHEREAS, the parties wish to enter into a binding agreement with respect to the future annexation of the Property and to provide for various other matters related directly or indirectly to said future annexation, in accordance with the provisions of Ill. Comp. Stat., 65 ILCS 5/11-15.1-1; and

WHEREAS, all notices, publications, public hearings and all other matters attendant to the Pre-Annexation Agreement and such Petition for Annexation and Zoning, have been given, held or performed as required by statute or the Village's ordinances, regulations, and procedures; and

NOW, THEREFORE, in consideration of the mutual covenants, agreements, terms and conditions herein set forth, the Owners and the Village agree as follows:

ARTICLE I

INCORPORATION BY REFERENCE

1.1 The statements, representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are incorporated into and made a part of this Agreement as though they were fully set forth in this Section 1.1. The Exhibits referred to in this Agreement and attached to or incorporated into it by textual reference are incorporated by reference into and made a part

of this Agreement as though they were fully set forth in this Section 1.1. The Parties acknowledge the accuracy and validity of those Exhibits.

ARTICLE II

ANNEXATION

2.1 The Owners shall file with the Village together with this Agreement an executed Petition for Annexation and Zoning for all of the territory described in Exhibit "A" in the form provided by law. The Owners shall not directly or indirectly attempt to withdraw an executed Petition for Annexation, once filed with the Village. Once annexed, neither the Owners nor any of their successors in interest shall file, cause to be filed, or take any action that would result in the disconnection or deannexation of the Property from the Village.

2.2 The Village shall record the Petition for Annexation and this Agreement in the office of the Recorder of Deeds of DuPage County. In addition, the Village shall record the petition and acknowledgment executed by a subsequent or successor Owners as provided in Paragraph above.

2.3. On or after the effective date of this Agreement, the Owners may request immediate annexation based upon this Annexation Agreement and petition filed pursuant thereto.

2.4. The Village shall take no action to annex the Property, except in response to a request for annexation, until , 2012, provided the Property is contiguous and otherwise lawfully able to be annexed to the Village. After said date, the Village may at any time prior to expiration of this Agreement annex the Property. The Owners, or their successors in interest, shall assist the Village and take all actions or steps necessary, including but not limited to, preparing and executing new petitions for annexation, waivers and plats, to accomplish said annexation.

ARTICLE III

WATER SUPPLY AND SERVICE COSTS

3.1 Provision of Service. The Village shall extend and provide water service to the Property in accordance with Section 4.1 of the Implementing Agreement.

3.2 Payment. Owners shall pay 100% of their proportionate share of the cost of the Village's provision of Lake Michigan water service to the Property prior to connection of the Village's provision of Lake Michigan water service to the Property.

3.2.1 Cost of Lateral Service Extensions to the Houses. The Village shall provide Owners a temporary reimbursement in the amount of \$3,000.00 for the cost of extending service lines from the Property line and B-Box to the Owners' house (including the costs of disconnecting and capping any individual well). The reimbursement amount shall be \$3,000.00 regardless of Owners' actual cost of this extension.

- i. Owners will contract directly for the lateral extension to the house work, either with a contractor under a price per job bid awarded by DuPage County, or with another contractor of the Owners' choosing. The funds provided by the Village are solely a temporary, partial advance to the Customers, subject to full repayment by the Owners, and are not "public funds" under the Mechanics Lien Act, 770 ILCS 60/1 et seq..
- ii. Owners shall receive its reimbursement upon completion of the lateral service extension work to Owners' house, but not before the work extending the service lines from the water main(s) to the Owners' Property line and B-Box is completed.
- iii. In order for Owners to receive its reimbursement under this Sub-Section, Owners shall present to the Village during normal business hours, the following:
 - a. proof of payment to the Owners' contractor for completion of the work laterally extending and connecting the service line at the Owners' house to the B-box at the Owners' Property line.
 - b. any permits or certificates regularly required by the Village for water service from the Village's distribution facilities.

3.3 Loans from Village to Owners. The Village shall offer a twenty (20) year, unsecured loan to Owners at the rate of two percent (2%) per annum to finance Owners' proportionate share of the Service Costs (including the \$3,000.00 temporary partial reimbursement for the Owners'

Cost of Lateral Service Extension to the House), as set forth in Section 3.2.1. Principle and interest payments will be due annually during the period of the loan.

3.3.1 Loan Documents. Owners agree to execute any other documents as may reasonably be necessary for the Village to issue the loan prior to the disbursement of any loan proceeds.

3.3.2 Loan Payments. Owners shall make monthly payments to the Village, in repayment of the Village's loan to Owners' for Owners' proportionate share of the Service Cost for the extension of service facilities to the Property. Owners' payments shall be the Owners' proportionate share of the *actual* Service Cost for the extension of service facilities to the Property, or the following amounts, whichever is less:

During the first six (6) years after service begins: \$ /month

During years seven (7) through twenty (20): \$ /month,

The above rates shall be applicable if Owners have, during the ninety (90) day period following the effective date of the Implementing Agreement, elected to receive Lake Michigan water from Downers Grove pursuant to this Agreement. If Owners elect to receive Lake Michigan water from Downers Grove pursuant to this Agreement after the expiration of said ninety (90) day period, Owners shall pay their proportionate share of the actual Service Cost for the extension of service facilities to the Property, at rates adjusted for then current Service Costs and a revised loan payment plan.

3.4 Water Service Rate. In addition to Owners' proportionate share of the Service Costs, the Village shall charge customers in the Affected Area, including Owners, a charge for water service established and uniformly applied in accordance with the Village's ordinances and policies. The Village may provide Lake Michigan water to Owners at a differential rate than to the Village's water customers for service within the Village's corporate limits, so long as the rate is not unreasonably discriminatory under Illinois law. The Village may also adjust Owners' charges based on factors such as Owners' water consumption. Monthly loan payments and water service charges shall be paid together, as determined by the Village.

- 3.5 Right to Discontinue Service. To the extent authorized by law, the Village have the right to discontinue service to Owners if Owners:
- i. fail to pay appropriate costs related to the costs of receiving service, including the Owners' share of Service Costs; or
 - ii. otherwise breach this Agreement.

Furthermore, to the extent authorized by law, a lien will attach to the Property in the amount that Owners are in default to the Village.

ARTICLE FOUR

BINDING TERM AND EFFECT

4.1. This Agreement shall be binding upon the Owners, as well as the Owners' successors, assigns and heirs. This Agreement shall constitute a covenant running with the land and shall be binding upon all persons taking any interest or right in the Property after the date of this Agreement is executed by the Village. Any person acquiring any rights or interest in the Property after the date of this Agreement shall be bound by the terms thereof and shall be deemed to have accepted and approved this Agreement in full.

4.2. Owners shall require any purchaser(s) of the Property to submit a properly executed Petition for Annexation and an acknowledgment and acceptance of this Agreement in the form attached hereto as Exhibit "C," prior to the transfer of any interest in the Property. The forgoing notwithstanding, the failure, refusal or neglect of Owners to submit these items shall in no way affect the continued validity of this Agreement or the Petition for Annexation set forth in Article 2.

ARTICLE FIVE

MISCELLANEOUS

5.1. Except as may be specifically provided herein, Owners shall enjoy the same rights and abide by the same rules and regulations with respect to water service, availability, and usage as consumers

and customers within the corporate limits of the Village. This provision includes, but is not limited to, any sprinkling bans or limitations which may be imposed by the Village.

5.2. The parties to this Agreement or their successors or assigns, may, in either law or equity, by suit, action, mandamus, injunction, or other proceedings in court, enforce and compel the performance of this Agreement, including suits for specific performance.

5.3. This Agreement may only be amended by written instruments signed by both parties.

5.4. The effective Date of this Agreement shall be the date first written above. The term of this Agreement shall be twenty (20) years from the Effective Date.

5.5. If any provision of this Agreement or ordinance enacted pursuant hereto shall be declared invalid by a court of competent jurisdiction, such provision shall be deemed to be excised from this Agreement, and the same shall not affect the validity of this Agreement as a whole, other than the part so declared invalid. Neither of the Parties shall challenge the validity or enforceability of this Agreement nor any provision of this Agreement, nor assert the invalidity or unenforceability of this Agreement or any of its provisions.

5.6. For purposes of this Agreement, the words and phrases used in this Agreement shall, unless otherwise expressly defined herein, have the same meaning as defined in the Intergovernmental "Implementing Agreement" between the Village, the DuPage Water Commission and the County of DuPage dated

5.7. This Agreement may be executed in multiple counterparts of duplicate originals or with multiple signature pages each of which shall constitute and be deemed one and the same document.

5.8. The undersigned Owners warrant that ___he___ constitute all Owners of the Property and that ___he___ have full authority and power to sign the Agreement and the petition submitted herewith and that they have not and will not take any action to change Ownership in the Property until after this Agreement is recorded.

IN WITNESS WHEREOF this Agreement has been duly executed by whose names are subscribed below or on the signature pages attached hereto from time to time, and which pages are specifically incorporated herein.

OWNERS

By: _____
(print name)

(print name)

By: _____

(print name)

VILLAGE OF DOWNERS GROVE

By: _____
Mayor

Attest: _____
Village Clerk

Subscribed and sworn to before me

this ____ day of _____, 20__.

Notary Public

**NOTICE OF PENDING
ANNEXATION AGREEMENT
VILLAGE OF
DOWNERS GROVE**

Owners(s) of the property at _____,
filed with the Village of Downers Grove a Petition for Annexation and Annexation Agreement on
_____. The property shown above and the subject of the annexation
petition and agreement is legally described as follows:

(P.I.N.:)

VILLAGE OF DOWNERS GROVE

By:

Village Clerk

OWNERS

By:

(print name)

(print name)

By:

(print name)

This document prepared by:
Village Attorney
Village of Downers Grove
801 Burlington Avenue
Downers Grove, IL 60515

Subscribed and sworn to before me

this ____ day of _____, 20____

Notary Public